Leader Development: TTPs for Working With Union Employees

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CONGRATULATIONS! You have just become the corps commander at Fort Snuffy, a large Army installation. You are now responsible for 41,000 soldiers and 8,000 civilians assigned to the corps. As an officer with more than 30 years of military experience and schooling, you are confident in your ability to lead and develop your officers and enlisted personnel, but what about your civilian employees, 4,000 of whom have elected to have a union representative speak on their behalf?

Substitute a garrison commander, a sergeant major, or a brigade executive officer for the corps commander in this scenario and the question still exists: How prepared are commanders and senior leaders to lead and work with federal civilian employees represented by a labor union? In most cases, the answer depends on how much effort leaders devote to personal leadership development in the area of labor-management relations.

Army "leaders must be appropriately developed before assuming leadership positions" and "have a certain level of knowledge to be competent."[1,2] Part of that knowledge includes developing technical, conceptual, and interpersonal skills that enable them to know their people and how to work with them.[3] To develop leadership and occupational skills, Army officers and noncommissioned officers progress through a formal leader development system.[4] Throughout their careers they receive extensive institutional training at military schools.[5] They advance to operational assignments where they plan and execute complex missions worldwide, using the most technologically advanced equipment and technically skilled personnel available.[6] They carefully manage their careers, and as they progress in the ranks, they learn to develop subordinate officer and enlisted personnel—the uniformed side of the military services.

The Army does not teach leaders the rules involved with labor-management relations as part of its traditional military training. While military leaders can learn the rules at operational assignments, this is not a good alternative. Mistakes pertaining to labor relations often have legal consequences [and] adversely affect mission accomplishment. . . . To avoid these mistakes, leaders must therefore focus on the self-development part of leadership development.

[redacted] for military leaders who work with federal civilian employees represented by unions. The Army does not teach leaders the rules involved with labor-management relations as part of its traditional military training. While military leaders can learn the rules at operational assignments, this is not a good alternative. Mistakes pertaining to labor relations often have legal consequences. They can also adversely affect mission accomplishment and the command's relationship with its employees and their elected union representatives. To avoid these mistakes, leaders must therefore focus on the self-development part of leadership development.[7] At a minimum, Army leaders must learn the basic rules for working with union employees and ensure that other military and civilian personnel understand them too.

How many civilian employees actually have union representatives? As of 1999, the Army had 121,302 union employees, or 59 percent of its civilian workforce, working at over 300 Active and Reserve Component (AC and RC) commands or facilities.[8,9] The presence of union employees is not limited to the Army. Commanders working at joint jobs or other federal facilities will also encounter these

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employees since unions represent more than half of the civilian workforce the Department of Defense (DOD) employs.[10] Most of these employees work in the United States, but there are also union employees assigned to Bermuda, Puerto Rico, Panama, Guam, Europe, Japan, South Korea, and Hawaii.[11] The Air Force has the largest percentage of union-represented employees at 72 percent, and the Navy has the lowest at 58 percent.[12]

Some commanders and senior leaders who have not worked with unions during the early part of their careers erroneously think that the issues of labor-management relations are insignificant. For most Army officers, the first 10 to 15 years of their military careers focus on company- or battalion-level issues involving military personnel. Not many civilian personnel issues arise during this time because there are generally few civilian employees assigned to these lower levels of command. When issues do arise, they usually involve sexual harassment or equal employment opportunity complaints, not labor disputes.

As commanders and leaders move to operational assignments at higher levels of command, there are more civilian employees, many of whom have union representation. Higher level leaders soon realize that labor-relations issues are some of the greatest challenges they face and that no one ever explained how to deal with such issues. The rules are not difficult; they are just different, and military leaders must familiarize themselves with them so they can exhibit the same leadership skills as when dealing with military personnel, which is part of becoming "the very best leader you can be: your [civilian employees] deserve nothing less."[13]

Following are seven tactics, techniques, and procedures (TTPs) Army leaders can follow to avoid labor-management issues when working with civilian employees who have union representation. TTP 1 advises Army leaders to learn the basic labor-relations processes and uses common scenarios and diagrams to illustrate how these processes work. TTPs 2 and 3 are practical tips for what leaders should do on arrival at facilities with union employees. TTP 4 focuses on training issues and explains ways commanders and leaders can obtain information on union-related matters for themselves or members of their organizations. TTP 5 contains a summary of the most common labor-relations rules Army leaders should know so neither they nor members of their staff inadvertently violates them. Union representatives also violate labor-management rules on occasion, and TTP 6 describes some of the union violations Army leaders might encounter. Despite the best efforts of the parties involved in the process, violations of the rules will still occur, and Army leaders must accept the consequences, as discussed in TTP 7.

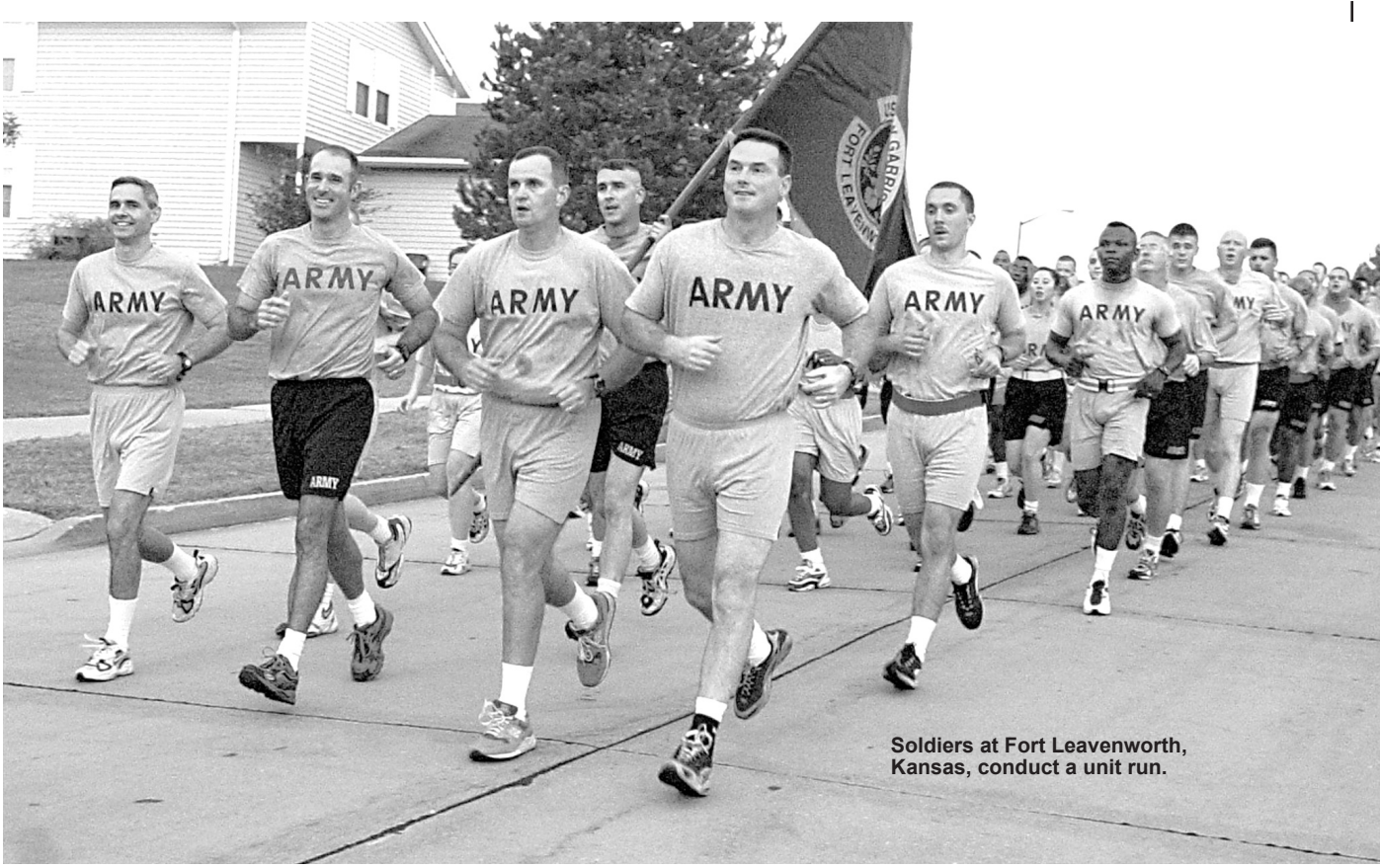
TTP 1
Learn the Basic Labor-Relations Processes

Physical Training (PT) at Fort Snuffy used to begin at 0600 and end at 0700. Soldiers complained that the childcare center did not open until 0600 and they could not get to PT on time. The childcare center does not have the personnel needed to open earlier. As a commander who cares about soldiers, you changed the PT start time to 0630. The next day, the union filed an Unfair Labor Practice (ULP) charge against you for violating the rights of your civilian employees.

What is wrong in this scenario? Commanders can change PT times for their troops, can't they? If there are no union employees working on the installation, the answer is yes. If the change would impact a significant number of union employees, the answer is also yes, but the command must take additional steps to avoid violating the rights of union employees.

Federal labor-management relations law requires agencies to negotiate, or collectively bargain, with civilian employees through their elected union representative about most work-related changes or policies that affect union employees during duty hours.[14,15,16] Basic things like rearranging office furniture, canceling an office water cooler contract or newspaper subscription, and implementing parking rules where union employees work are all examples of working conditions that would be subject to negotiations.[17]

Not every work-related issue is negotiable. Things like mission, budget, internal security, hiring, firing, and assigning work are so key to



Prudence Siebert, *Fort Leavenworth Lamp*

Soldiers at Fort Leavenworth, Kansas, conduct a unit run.

Delaying the PT schedule by 30 minutes might affect employees trying to get to work. . . . If employees are late for work, the agency could decide to discipline them. . . . The commander might have violated the rights of his union employees by unilaterally changing the PT start time without notifying the union representative and providing the opportunity to bargain over the effect that change would have on union employees.

being able to run a federal agency that Congress has exempted these management rights from negotiations by statute.[18] While the substance of these rights are not negotiable, the parties are obligated to negotiate over the impact of the application of these rights and the procedures for their implementation, if requested by the union.

Leaders who want to change day-to-day working conditions that will affect union employees must give the union representative notice of the proposed change and the opportunity to bargain about it, even if the change will affect only one union employee.

If the agency gives notice of a change and the union does not timely ask to bargain over the matter, then the agency may implement the change as proposed in its notice. If the union asks to bargain over the proposed change, then the agency must delay making the change until bargaining has been completed.

ULP process. At Fort Snuffy, the commander might have violated the rights of his union employees by unilaterally changing the PT start time without notifying the union representative and providing the opportunity to bargain over the effect that change would have on union employees.[19] Most civilian employees travel to work on military installations between 0700 and 0800. Delaying the PT schedule by 30 minutes might affect employees trying to get to work. Civilians might experience delays when having to slow down for soldiers running in formation or because of the increased traffic congestion immediately following the end of PT. If employees are late for work, the agency could decide to discipline them. Because union employees might encounter delays they had not experienced before and possibly face disciplinary action if they are late, the union representing them could argue that the PT schedule change affects their day-to-day working conditions. The union could also argue that the commander violated the law by not giving the union prior notice of the change and the opportunity to bargain over its impact. Under such circumstances, the union has the right to file a ULP charge at the Federal Labor Relations Authority (FLRA).[20]

Once a union files a ULP charge against a command or agency, there are two ways to resolve it. The first and best way to resolve a ULP is for the command or agency involved to informally address the issues contained in the charge with

the union. In the PT scenario, this means that a Fort Snuffy representative and a union representative would meet and discuss the concerns of both sides in an effort to resolve the issues raised by the parties. For example, the parties could discuss proposals for alleviating traffic congestion during and after PT formations or designate roads or

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gates that civilians could use with less chance of delay. Another option might be for the command to temporarily give affected civilians an additional 15 minutes of administrative time to get to work on PT days. Regardless of the specific compromise reached, if the parties amicably resolve the issue themselves, the union can withdraw its ULP charge, and both sides will save time and money. Also, such efforts can promote positive labor-management relations that could positively affect overall mission accomplishment.

If Fort Snuffy and the union cannot reach an informal agreement, then the second way to resolve the ULP charge is to have it processed through formal FLRA proceedings. Initially, the FLRA's general counsel will receive the charge at one of its regional offices and conduct an investigation. If the union's allegation that the command failed to bargain over a change in working conditions has merit, the FLRA general counsel (or a regional representative) can prosecute the charge before an administrative law judge at an administrative hearing. Lawyers representing Fort Snuffy and the FLRA general counsel (appearing on behalf of the charging party) will each present witnesses and evidence supporting their side of the case. After listening to the evidence, the judge will issue a decision resolving the matter. Either party may file exceptions to the judge's decision with the FLRA, and the FLRA will consider all arguments before making a final decision. Once the FLRA issues its decision, both Fort Snuffy and the union must comply with it. In limited circumstances, the decision may be appealed to the federal courts.

Impasse resolution process. You still want to change the PT start time. You have notified the union of the proposed change, and the union has asked to discuss the impact it will have on union employees. You have been negotiating the impact and implementation of the change for a week, but the union refuses to agree to any of your proposals. What happens now?

If Fort Snuffy and the union have fully discussed the issues that surround the PT start time but cannot agree on how to resolve its impact on bargaining-unit employees, they have reached an impasse. This scenario is different from the ULP scenario because no one has broken the law by refusing to bargain over an issue. In this scenario, both sides have complied with their duty to bargain, but they cannot reach agreement. If this happened in a civilian business, the employees could go on strike; however, the law prohibits union employees of the Federal Government from going on strike. Instead, federal impasses are raised to the Federal Service Impasses Panel (FSIP).

Before going to the FSIP, the parties must first try to settle the impasse using the mediation process. The parties typically choose a mediator from the Federal Mediation Conciliation Service (FMCS) as a neutral third party to listen to their positions and help them resolve their dispute.

The mediator does not decide the case; the parties do. The mediator merely meets with the parties, together and separately, and allows them to vent their complaints and concerns. Using the information provided, the mediator seeks concessions from each side and relays that information to the opposite side.

The mediator has no authority to force either side to concede or agree to any particular language. However, parties participating in the mediation process should remember that mediation is their last chance to have direct input into the outcome of their dispute. If mediation fails, a third party will review each side's position, then direct specific binding contract language to resolve the impasse.

Astute mediators focus primarily on the parties' underlying concerns rather than on their specific demands. For example, a mediator chosen to hear the Fort Snuffy PT case focuses on the reason why the PT time change concerns the union, rather than on the time change itself. This tactic gives the parties flexibility in brainstorming possible alternatives in addressing the union's concerns about employees being on time for work, while still allowing the command to make the change it wants to support soldiers needing childcare during PT. Assuming

this give-and-take process successfully addresses the concerns of both sides, the parties sign an agreement or memorandum of understanding concluding their negotiations. If the parties do not reach agreement, the mediation ends.

Disputes not resolved during the mediation process proceed to the FSIP, which is the final step in resolving an impasse dispute. The FSIP is an entity within the FLRA that is designed to help agency and union counterparts resolve their negotiation impasses.[21] When negotiations fail, including mediation with a third-party neutral, FSIP will take "whatever action is necessary" to resolve the impasse.[22] This can include reviewing written submissions, having a hearing, or using any other method the FSIP deems appropriate for resolving the dispute.

FSIP's decision is binding on both sides and is generally not subject to review by a federal court. If either Fort Snuffy or the union fails to comply with FSIP's decision on implementing language regarding the affect of the PT change on union employees, the other party may file a ULP charge with the FLRA. This could ultimately lead to an expensive and time-consuming ULP hearing.

TTP 2
Read the Collective Bargaining Agreement(s) (CBAs)

You are a brigade executive officer who just arrived at Fort Snuffy. You understand the basic labor-management relations process, but you do not know how it applies to the union employees working in your office. What do you do first?

Commanders and senior leaders assigned to installations or facilities where union employees work must read the CBAs that apply to their employees. A CBA is the document written by command and union representatives during the negotiation process that establishes the rules applicable to a specific group of employees. While an installation will not designate every Army leader as an agency representative for labor-management relations, every leader must understand his or her responsibilities toward union employees. All levels of management are bound to comply with the terms of the collective-bargaining agreement that affect their bargaining-unit employees. Reading the CBA is the first step to learning about labor relations in a new job because it identifies the employees covered by an agreement, the union representing those employees, and the rules governing the day-to-day working relationship between the command and those employees. For example, a typical CBA might have the following information in the first few pages of the agreement:

To avoid violations of the rules, Army leaders must first know what rules apply when working with union employees. The provisions negotiated as part of a CBA are clearly rules the parties must follow during the labor-management relationship. The only way to learn them is to read the CBA.

Cover Page:
Collective Bargaining Agreement between
Fort Snuffy and the American Federation of
Government Employees (AFGE)
1 January 2000

Table of Contents:
Applicability . . . 1
Management Rights . . . 2
Official Time . . . 3
Grievance Arbitration Procedures . . . 4
Leave Procedures . . . 5

Page 1:
This three-year contract governs all clerical employees working on Fort Snuffy.

Knowledge of these few pages alone tells an Army leader several things. First, these pages reveal that there is a CBA currently in effect, and AFGE represents all of the clerical employees working on post.[23] Fort Snuffy must comply with the CBA and work with AFGE on all labor-relations issues as they affect these employees. However, Fort Snuffy does not have to coordinate with AFGE on labor issues involving any of its other civilian employees where the clerical employees covered by the CBA are not affected unless another group has also elected to have AFGE represent them.

Second, the index highlights some of the specific areas where Fort Snuffy and the union have negotiated rules governing the working environment for the employees the agreement covers. Some of these rules repeat statutory requirements, while others are unique to the installation. Either way, leaders can only avoid violating these rules if they know what they are.

Last, these pages tell installation leaders that the agreement has been in effect since 1 January 2000 and will expire on 1 January 2003. New ne-

gotiations will probably begin around November 2002, meaning that preparations for the negotiations should begin now, unless both sides want the existing CBA to roll over without change.

The installation needs to identify a team to represent it at the bargaining table. This team should collect data from all levels of management on provisions in the current CBA that the agency wants renegotiated. The team should draft and coordinate revisions to those provisions and staff any new proposals the agency wants included in the next CBA.

Commanders need to budget and schedule training for members of their negotiating teams. If the installation does not have experienced agency representatives to negotiate a new agreement, it should coordinate with its higher headquarters for guidance.

On many installations, Army leaders work with several CBAs and unions representing civilian employees. For example, five CBAs apply to five different groups of employees working at Fort Bliss, Texas. Each CBA governs the day-to-day working conditions for the specific employees the agreement covers. One person serves as the primary representative for all labor-relations issues at Fort Bliss. However, all military and civilian leaders working there must understand the provisions agreed to in each of the CBAs as part of their leadership obligation to know their people and how to work with them. This will help ensure that neither they nor their subordinates inadvertently violate the rights of any of their union employees.

Federal law gives civilian employees the absolute right to join or to refrain from joining and participating in union activities. Army leaders must ensure that they do not take actions that either support or interfere with this right. For example, leaders . . . cannot penalize or discriminate against any employee because he or she filed a complaint against an installation or actively supported union activity.

How do leaders learn the rules or get access to the relevant CBAs? First, they can contact their servicing management-employee relations (MER) or labor-relations specialist and ask for a copy of all applicable agreements.[24] Army leaders working at RC units must contact a civilian personnel generalist working at Fort McCoy, Wisconsin, for this information.[25]

After reading the CBAs, leaders should ask about the history of the relationship with the relevant union(s). Has it been a good working relationship or a bad one between the personalities involved? Have there been a lot of complaints filed against the agency? Are there any issues currently pending? If there is no MER specialist available to provide this information, Army leaders can contact the labor counselor at their servicing staff judge advocate office for assistance.[26] Labor counselors for RC units will be either at the servicing regional support command or at Fort McCoy.[27]

TTP 3
Know the Players

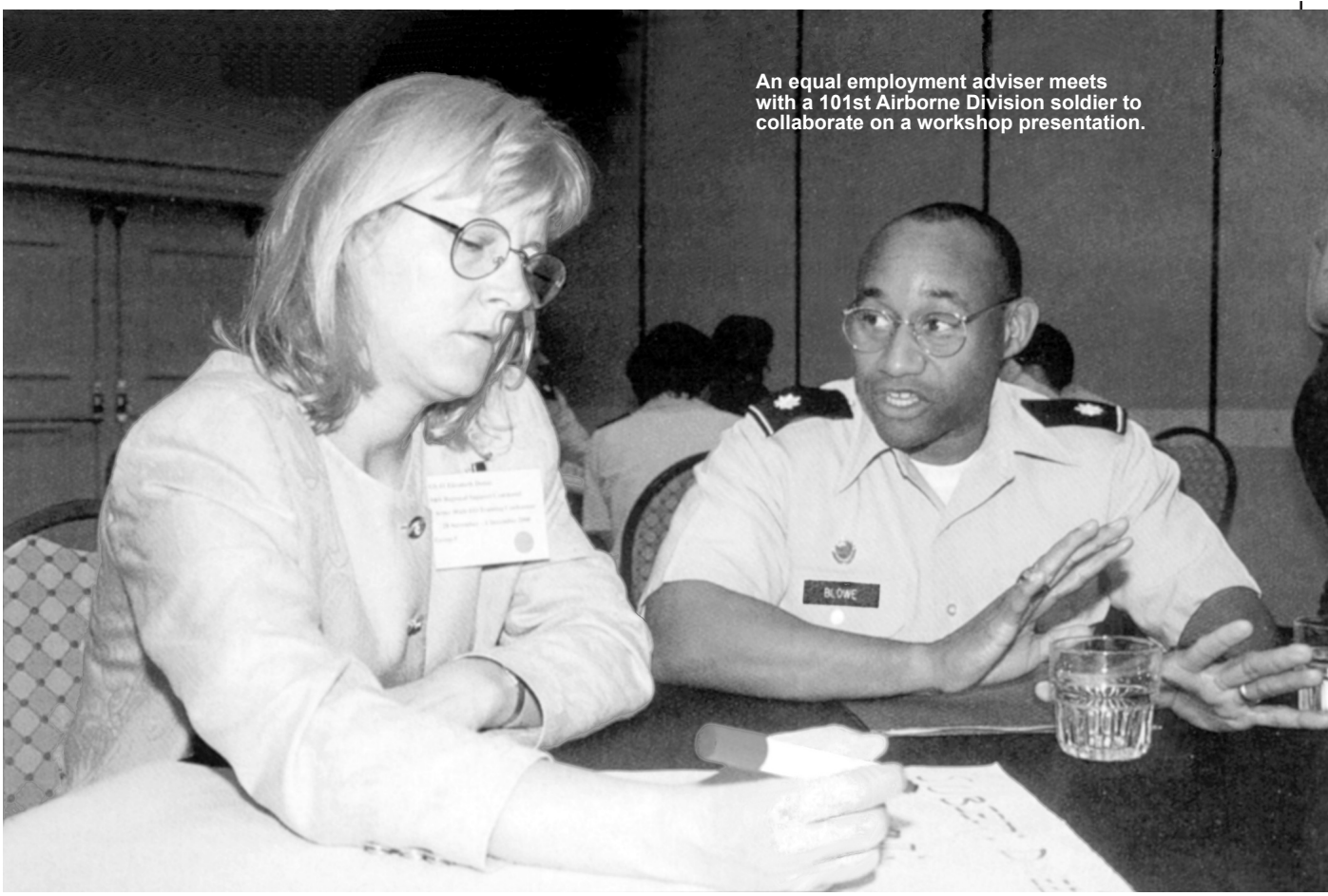
As the new brigade executive officer at Fort Snuffy, you have read the CBAs that apply to your union employees. What do you do next?

Developing the labor-management relationship is a people business. While laws and agreements provide structure for the relationship, it is the people who participate in the process who often lead to the success or failure of the relationship at any government facility. Army personnel rotating into leadership positions where union employees work must recognize the effect their actions can have on current and future labor-management relations. Knowing what the relationship has been historically will give new leaders insight into how to proceed from the moment they hit the ground.

On installations where the agency and the union have a longstanding relationship founded on trust and mutual respect, new leaders can focus on maintaining that positive working relationship. Where personality disputes and distrust have permeated the process, new leaders must focus on creating an amicable working relationship with union counterparts. This will not happen overnight. Trust and good working relationships take time and effort to build.

How can new leaders improve and maximize the effectiveness of a labor-management relationship? They can start by determining who the parties to the relationship are. The CBA will tell leaders the big picture players (such as AFGE and Fort Snuffy), but leaders must also learn who the actual spokespersons and representatives are.

Not every leader on an installation will serve as an agency representative to the union. Usually a garrison commander or a designated individual



An equal employment adviser meets with a 101st Airborne Division soldier to collaborate on a workshop presentation.

MSG Bob Haskell, *Soldiers*

If knowledge of the labor-management-relations process is a weakness that Army leaders want to turn into a strength, they need to add "self study, reading programs, and civilian education courses" to their personal leader-development program. [L]eaders can obtain general information about labor-management relations and specific labor issues by visiting the FLRA, Office of Personnel Management (OPM), or Army civilian personnel websites.

has that responsibility, and new leaders should ask their MER specialist or labor counselor who that is. When labor issues arise or a new leader wants to change a working condition that affects union employees, that leader should ask the agency representative for assistance. The agency representative will track any information sent to the union and any responses received, including requests to bargain over certain issues. The new leader should not contact the union directly unless specifically told to do so.

Garrison commanders and other leaders assigned as primary agency representatives must know their union counterparts. Predecessors, MER specialists, and labor counselors are great sources for information about union representatives. How long have they been there? How well has the command worked with them? What issues have concerned the union and the employees most in the last year? Are any still pending? For example, if Fort Snuffy has been downsizing because of a base realignment or contracting-out initiative, then job security may be of paramount concern to the union and the employees. New agency representatives will want to know this so they can work with the union to protect jobs and minimize stress to the employees.

After gathering information about the union and reading the relevant CBAs, new agency representatives should meet their union counterparts and try to make a positive impression early in the relationship. Army leaders must recognize that they will have to work harder at developing a successful labor-management relationship than the union will because they are new to it.

Most union representatives stay on an installation for years. Army leaders serving as agency representatives change frequently. Military turnover complicates every labor-management relationship because there is less time in which to develop the trust and respect that are so critical to it.

Using non-union civilian supervisors as agency representatives may help stabilize the relationship, but Army facilities should also have a military representative to ensure union employees know that the uniformed side of the house cares. Open and honest communication with the union on a regular basis is the greatest asset Army leaders have in developing a strong working relationship.

TTP 4
Ensure Training

Leaders have a duty to assess and develop themselves and their organizations.[28] If knowledge of the labor-management-relations process is a weakness that Army leaders want to turn into a strength, they need to add "self study, reading programs, and civilian education courses" to their personal leader-development program.[29]

This article highlights some common issues leaders might confront in operational assignments with union employees, but it is not exhaustive and still leaves many questions unanswered. There are books available on federal labor relations, but they are detailed and not user-friendly for agency officials seeking only to familiarize themselves and their subordinates with the process. As an alternative, leaders can obtain general information about labor-management relations and specific labor issues by visiting the FLRA, Office of Personnel Management (OPM), or Army civilian personnel websites.[30] Commanders and their subordinate supervisors can also attend labor relations or negotiation courses offered at local installations or at the Army's Civilian Personnel Operations Center Management Agency.[31] New battalion- and brigade-level commanders have the additional option of taking federal labor-relations classes during the Senior Officer Legal Orientation at The Judge Advocate General's School-Army or during pre-command courses at Fort Leavenworth, Kansas, Fort Belvoir, Virginia, and Fort McCoy, Wisconsin.[32]

While the law requires the Army to invite the union to [weekly staff] meetings if they are formal discussions, it does not require the union to attend. If a union representative elects to go, he or she may speak if there is something relevant to say. The union representative may not, however, disrupt or use the meeting as a forum for irrelevant union business.

Besides training themselves and other military personnel on labor-management relations, Army leaders must also devote time and resources to training civilian leaders. Soldiers and civilians of the Active and Reserve Components are equally essential to the success of national security.[33] Some civilian employees do not understand the rules governing labor-management relations because either a union has never represented them or they have never worked with union employees. Army leaders must therefore ensure that these civilians have the same training opportunities in the labor-management relations area as military personnel.

TTP 5
Follow the Rules

Fort Snuffy is an installation in Korea. One of the union employees submitted a request to stay in Korea for another overseas tour. The command has granted other requests in limited circumstances, but it denied this one without a reason. Is this a problem?

To avoid violations of the rules, Army leaders must first know what rules apply when working with union employees. The provisions negotiated as part of a CBA are clearly rules the parties must follow during the labor-management relationship. The only way to learn them is to read the CBA. Statutes and government regulations contain other rules that commanders and leaders must also observe. Since reading all of the applicable statutes and regulations is a time-consuming process that most leaders cannot afford, a summary of rules frequently encountered follows.

Management neutrality. Federal law gives civilian employees the absolute right to join or to refrain from joining and participating in union activities.[34] Army leaders must ensure that they do not take actions that either support or interfere with this right.[35] For example, leaders cannot voice their dislike for a particular union or encourage employees to join a different union. They also cannot penalize or discriminate against any employee because he or she filed a complaint against an installation or actively supported union activity.[36] Applying these rules to the union employee's request for an overseas-tour extension, the command might have a problem. If the union can show that the command denied the request because of the employee's union activities, then the command interfered with an employee's statutory rights, and the FLRA will find it committed a ULP.

Duty to bargain in good faith. As discussed in TTP 1, Army representatives have a duty to bargain in good faith with their union counterparts. This duty arises at the beginning of the labor-management relationship when the parties negotiate their first CBA and also applies during the relationship when the command or the union wants to change something in the CBA or some aspect of the employees' working conditions.

When discussing changes in working conditions or other issues subject to bargaining, Army leaders

must work through the union representative and not go directly to the employees. For example, an installation that wants to modify leave policies for union employees cannot send a survey on this work-related issue to the employees unless the union says it can. If the installation sends the survey and bypasses the union, the union can file a ULP charge alleging the installation failed to bargain with it.

To properly represent civilian employees covered by a CBA, union officials will often need information from the installation where the employees work. They will therefore submit a request to the relevant Army office. The union's request must show a "particularized need" for the information, that is, a link between the information sought and their duty to represent the employees.[37]

Once the union demonstrates its need, the Army office receiving the request has a statutory duty to furnish the information in a timely manner.[38] Army officials cannot tell the union to copy the information itself, charge the union for the information, fail to reveal that the information no longer exists, destroy the information, or delay the release of the information.[39] If they do, the union can file a ULP for failure to furnish information as part of the agency's duty to bargain in good faith.

Representation rights. Once civilian employees elect to have a union represent them at an Army facility, federal law gives that union the right to attend two types of work-related meetings. First, the union has the right to be present at any formal discussion when an Army or DOD official is talking about any grievance or general work-related issue and one or more union employees in their bargaining unit are present.[40]

There is no clear definition of what constitutes a formal discussion in the statute, but ULP cases where the issue has been litigated provide some assistance. The FLRA looks at the totality of the circumstances when deciding whether a meeting is formal or not. Things like where the meeting was held, how long it lasted, who was present, was there an agenda, and were notes kept are all relevant to its analysis.[41] At most Army facilities, formal discussions can include weekly staff meetings where union employees are present, quarterly mayors meetings, and a final-step meeting with the commander as part of the CBA's negotiated grievance procedure.[42]

If the FLRA decides that a meeting is formal, it will look at whether the agency gave the union advance notice of the meeting and the opportunity to be present. Whether the employees wanted the union to be present at the meeting does not matter. The union has the right to attend or not attend. If the agency did not give the union notice or the opportunity to be present, the FLRA will find the agency committed a ULP by violating the union's representation right.

Army officials must invite a union representative to attend meetings that constitute formal discussions and must also allow the representative to speak.[43] For example, some Army leaders give the union representative a standing invitation to attend weekly staff meetings because issues affecting union employees often arise. While the law requires the Army to invite the union to these meetings if they are formal discussions, it does not require the union to attend. If a union representative elects to go, he or she may speak if there is something relevant to say. The union representative may not, however, disrupt or use the meeting as a forum for irrelevant union business.

Army leaders must work hard to build trust and good working relationships with their union counterparts. The conduct of every Army leader working with the union will contribute to the success or failure of that relationship. . . . Leaders who disregard these rights out of either neglect or intentional misconduct will adversely affect the employees' perception of the command.

The second type of work-related meeting where the union has representation rights is at an investigatory examination of a union employee. An investigatory examination is where an Army or DOD official talks to a union employee as part of an investigation, and the employee reasonably believes that discipline can result against him or her because of the discussion.[44] In that case, the employee can ask the questioning official to have a union representative present.

Once an employee asks for union representation, the questioning official has three options. First, the official can allow the union an opportunity to attend. Second, he or she can end the interview and continue the investigation without input from that employee. Third, the agency official can give the employee the option of either answering the questions without a union representative or having no interview at all.[45] If the employee elects to answer the questions, the interview continues. If not, the agency official ends the interview and continues with the investigation without input from the employee.

Unlike the formal discussion, the union does not have an absolute right to be present at an investigatory

examination. The employee must request union representation. If the employee does not ask for a union representative, then the union has no right to interject itself into the meeting. Agency officials do not have a statutory obligation to tell union employees of their right to have a union representative present before every investigatory examination.[46] However, they must remind the employees of these rights annually.[47]

Most installations notify their employees of their rights through either a paper notice or by email. An installation may also choose to remind union employees by scheduling an annual meeting they must attend, having them sign in, and telling them all at once. Because this type of meeting would constitute a formal discussion, agencies choosing to use this type of reminder must also give the union notice of the meeting and the opportunity to attend. Failure to notify the employees of their rights annually or to invite the union to a formal discussion may result in a ULP charge against the agency for violating the union's representation rights.

TTP 6
Know the Common Union Violations

You are the garrison commander at Fort Snuffy. You notice that one of the clerical employees covered by the CBA is at a ULP hearing with a union representative, but without a lawyer. Last week, you were at a ULP hearing where another employee covered by the agreement had both a representative from the same union and a union-provided lawyer. Is there a problem with this?

Army leaders are not the only ones who violate federal labor laws or the terms of the CBA. Union representatives do too. Army leaders must be able to recognize union violations, such as the following, and decide what to do about them.[48]

Duty to bargain in good faith. Union representatives have the same duty to bargain in good faith that Army representatives have. If a union improperly refuses to discuss an issue, refuses to cooperate in the impasse procedures, or signs a settlement agreement on an issue, but refuses to comply with the agreement, the agency can file a ULP charge against it at the regional FLRA office.[49] The FLRA will investigate and decide the case using the procedures described in TTP 1.

Duty of fair representation. Once a group of employees elects a union to serve as its representative, that union has a duty to represent all of the employees in the group fairly. Some employees in the group will elect to join the union and pay dues to it. Others may not pay dues, but they are still entitled to union representation as long as they are employees in the group covered by the CBA. Regardless of whether the employees pay dues or not, a union serving as an exclusive representative must give all employees covered by the CBA the same services and not discriminate against the nondues-paying employees to coerce them to join the union and pay dues.[50] Applying this rule to the ULP scenario above, there may be a problem with one employee having a lawyer present at the ULP hearing while another employee, also covered by the CBA, does not have a lawyer present.[51] If the union provides a lawyer only to those employees who pay dues, it violates its duty of fair representation and commits a ULP that the FLRA can investigate.

TTP 7
Accept the Consequences of Illegal Actions

A union files a ULP charge against Fort Snuffy for failing to extend a union employee's overseas-tour extension. The FLRA investigates and determines the command illegally denied the request because of the employee's union activities. What can the FLRA do?

Many violations in the labor-management relations arena occur out of ignorance rather than out of intent. Reading the CBA, establishing a good working relationship with the parties, obtaining sound advice from agency labor advisers, and understanding the rules from the beginning will help reduce the number of complaints new commanders and senior leaders face when working with civilian employees and their union representatives. However, recognizing that violations will still occur, by the agency and by the union, Army leaders must know and accept the consequences of them.

Unfair labor practices. Army leaders and union representatives who violate federal labor laws might face the ULP proceedings described in TTP 1. If the FLRA investigates a ULP charge and finds a violation of the law, it can take any remedial action necessary to resolve the case. This usually means the FLRA will issue a combination of five remedies.

First, in all ULP cases, the FLRA will order a public posting of its final decision for a specified period of time. If the FLRA decides against the agency, its decision will state that the agency violated the law and identify what it must do to remedy the violation.

If the case involves a continuing violation, the FLRA decision will probably include a cease and desist order requiring the agency to stop its illegal actions immediately. For example, if Fort Snuffy is disciplining union employees who are late because of the traffic caused by the change to the installation PT schedule proposed in TTP 1 without notifying the union first, the FLRA may order Fort Snuffy to immediately cease and desist taking such actions.

The FLRA might also issue a retroactive bargaining order requiring Fort Snuffy to go to the bargaining table to discuss the impact the PT time change is having on union employees and ways to implement change so the impact is reduced.

If Fort Snuffy disciplined any employees for being late to work as a result of the change, the FLRA could further issue a status quo ante order removing any disciplinary action taken and returning the employees to the position they were in before the illegal action.

Assume, in the denial of the overseas-tour extension scenario, that the employee flew back to the States. In such a case, the FLRA might order a public posting plus the following two remedies: the status quo ante order and a backpay award. Again, the status quo ante order would require Fort Snuffy to put the employee back in the same position he was in before the command illegally held his union activities against him. The employee would then return to Korea at government expense. The backpay award would require the command to pay the employee for any wages or overseas allowances lost because of the illegal move.

Grievance arbitration procedures. Every CBA contains grievance procedures negotiated by the parties to resolve complaints that stem from violations of the CBA itself. The parties may also use the grievance procedures instead of the ULP procedures to enforce compliance with federal labor laws and government regulations. Most grievance procedures have several steps that allow the union or an employee covered by the agreement to submit an oral complaint or a written complaint to specified members in the chain of command. If the parties do not settle the grievance within command channels, then the command or the union may invoke binding arbitration to resolve the complaint.[52] There is usually no appeal from an arbitrator's decision on a grievance unless the decision is contrary to any law, rule, or regulation or on other grounds similar to those applied by federal courts.[53]

Affect on working relationships. Violating the rules in the labor-management arena not only has legal consequences, it also has practical consequences. As discussed in TTP 3, Army leaders must work hard to build trust and good working relationships with their union counterparts. The conduct of every Army leader working with the union contributes to the success or failure of that relationship. Since conduct speaks louder than words, Army leaders must strive to comply with the rules, or they might permanently jeopardize an installation's labor-management relationship.

Similarly, employees who work at Army facilities will watch the command to assess its leadership example. Union employees will observe whether the agency supports their rights and understands the labor-management-relations process enough to work within the rules. Leaders who disregard these rights out of either neglect or intentional misconduct will adversely affect employees' perception of the command.

Non-union employees will follow their leaders' examples so they know how to work with union employees. If that example is one of disinterest or disregard of union rights, it will permeate the attitudes of others, thereby causing a morale problem that could take a long time to repair.

Leadership from the Top

Leadership begins at the top, and nowhere is that more true than in the labor-management-relations process. Since traditional military schools do not teach labor-management relations, Army leaders must devote themselves to learning about the process and how it applies to union employees.

Reading the seven TTPs discussed here is a good beginning, but Army leaders at all levels must do more to be successful. They must read the CBAs, meet the players, and aggressively work on the command's relationship with union counterparts to maximize its effectiveness. Army leaders need to train military and civilian leaders involved in the process. Civilian personnel advisory centers (CPACs) can provide this training. Leaders can also encourage subordinates to read available labor-relations information and be ready to answer questions. They need to recognize that despite everyone's best efforts, violations of the rules will still occur, and everyone must be ready to accept the consequences. Army leaders must be the standard bearers for the command when it comes to labor-management relations for the process to work as efficiently and amicably as it can. Only after commanders and leaders understand the process and abide by the rules will they be able to take care of union employees with the same degree of competence and confidence as they do military personnel. ***MR***

NOTES

1. Department of the Army Pamphlet (DA Pam) 350-58, *Leader Development for America's Army* (Washington DC: U.S. Government Printing Office [GPO], 13 October 1994), 1.
2. U.S. Army Field Manuel (FM) 22-100, *Army Leadership* (Washington, DC: GPO, August 1999), 1-7.
3. Ibid.
4. DA Pam 350-58, 1.
5. Institutional training is the first step in the Army Leader Development Model (ALDM) and focuses on basic job skills (DA Pam 350-58, 3). Officers usually complete a basic course, an advanced course, and the Command and General Staff Officer Course. Some officers also attend precommand courses and senior service schools. Noncommissioned officers (NCOs) attend basic training, advanced individual training, primary leadership development training, basic and advanced NCO courses, and if selected, the Sergeant's Major Academy. Officers and NCOs also attend a variety of short courses designed to develop further the specific skills needed for their positions.
6. Operational assignments are the second step in the ALDM. They provide leaders the opportunity to translate institutional theory into practice in progressively more complex assignments (DA Pam 350-58, 3).
7. Self-development is the third step in the ALDM and is designed to fix weaknesses, reinforce strengths, and stretch and broaden an individual beyond the job or training (DA Pam 350-58, 3).
8. In this paper, the term "union employees" means a "bargaining unit" or group of federal civilian employees who have elected a particular union to serve as their exclusive representative. The fact that the union represents these federal employees does not mean that the employees pay dues to the union or that every employee in the group represented voted for the union. This paper addresses federal civilian employees represented by a union under public-sector labor laws. It does not address contractor employees covered by private-section labor laws or foreign nationals covered by unions under their host-nation laws.
9. U.S. Office of Personnel Management (OPM), *Union Recognition in the Federal Government as of January 1999* (Washington DC: Office of Workforce Relations, January 2000), 115-156.
10. Ibid., 48.
11. Ibid., 102-197.
12. As of 1999, the Air Force had 100,585 union-represented employees working at almost 90 facilities. The Navy had 112,579 union employees working at hundreds of facilities throughout the Continental United States (CONUS) and Outside the Continental United States (OCONUS) (OPM, Union Recognition, 48, 50, 105-197).
13. FM 22-100, 1-1.
14. The rules for the labor-management relations process for the Federal Government are in the Federal Service Labor Management Relations Statute (FSLMRS) (USC, Title 5, Sections 7101-7135 [2001]).
15. The FSLMRS defines collective bargaining as "the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective-bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession" (Ibid., Section 7103a(12) [2001]).
16. National Association of Government Employees and Department of the Army, 5th Infantry Division and Fort Polk, 19 Federal Labor Relations Authority (FLRA) (1985), 552. There is no duty to bargain with union employees about issues that affect them only when they are off duty, such as using a gym or recreational facility.
17. *USC*, Title 5, Section 7102(2) (2001) states that each employee shall have the right "to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees." Section 7103A(14) (2001) defines conditions of employment that must be negotiated as "personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions." Conditions of employment do not include prohibited political activities, the classification of any position, or anything prohibited by federal law. Even if something meets the definition of condition of employment, federal facilities do not have a duty to bargain over proposed changes that will have a minor or *de minimis* impact on union employees. See General Services Administration and National Federation of Federal Employees, 52 FLRA (1997), 1107 (deciding that an agency did not have to bargain over temporarily relocating a union employee from one building to another); and Department of Health and Human Services and American Federation of Government Employees (AFGE), 24 FLRA (1986), 403 (changing an employee's title, but not his or her duties, did not create a duty to bargain).
18. *USC*, Title 5, Section 7106a (2001) states that management officials have the following rights that are not subject to negotiation: "(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and (2) in accordance with applicable laws—(A) to hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; (C) with respect to filling positions, to make selections for appointments from—(i) among properly ranked and certified candidates for promotion; or (ii) any other appropriate source; and (D) to take whatever actions may be necessary to carry out the agency mission during emergencies."
19. The union would not have the right to bargain over the PT start time itself because unions have no authority to negotiate over conditions of employment for soldiers. The union would therefore focus the bargaining on the impact the start time change would have on union employees. Also, the agency would only need to give notice of a change in the PT start time if the change actually would impact a significant number of union employees.
20. The FLRA is the federal agency responsible for interpreting and administering the FLMRS. It also renders the final decision in all unfair labor practice cases (USC, Title 5, Section 7104 [2001]).
21. Ibid., Section 7119(c)(1) (2001).
22. Ibid., Section 7119(c)(5)(B)(iii) (2001).
23. While the CBA states which employees the CBA applies to, the parties to the agreement do not bargain over whom to include in the bargaining unit. When a union first seeks to represent a group of employees, it petitions the FLRA with the relevant information, and the FLRA decides which employees constitute an appropriate bargaining unit.
24. An MER or labor-relations specialist is a civilian employee assigned to advise Army leaders on labor-management-relations issues; to prepare civilian personnel documents relating to performance or discipline; and to participate in contacts with union representatives. He or she also maintains copies of CBAs for the command and is often the best source for historical information regarding the labor-management relationship at a facility. Labor-relations specialists are usually at the servicing CPAC.
25. Telephone interview with Kim Meyer, Fort McCoy CPAC, 6 February 2002. The Deputy Chief of Staff for Personnel at the servicing Regional Support Command will have the name and phone number for a specific point of contact at the Fort McCoy CPAC.
26. A labor counselor is a judge advocate or civilian attorney responsible for advising senior leaders on the legal aspects of labor-management relations and representing the command or federal facility at third-party labor proceedings such as ULP hearings, federal mediations, and grievance procedures. The labor counselor also renders legal advice to the management team negotiating the CBA for the command or federal facility.
27. Telephone interview with Tim Johnson, Fort McCoy Labor Counselor, 6 February 2002. Personnel assigned to Reserve Component (RC) units that do not have a labor counselor at the regional support command can contact a labor counselor at Fort McCoy by calling (608) 388-2165.
28. FM 22-100, ix.
29. DA Pam 350-58, 3.
30. The FLRA website at <www.flra.gov> contains extensive information about rules and procedures for ULPs, impasses, negotiation disputes, and a variety of other labor issues. It also has copies of final decisions recently issued by the FLRA in labor-management disputes. OPM helps the Federal Government improve its operations by helping agencies work effectively with federal labor organizations. Its website at <www.opm.gov/lmr/> contains numerous resources that agency officials can read to improve their knowledge on specific labor issues. Army-specific information on labor-management relations is online at <www.cpol.army.mil/library/labor.htmc>.
31. The Army's Civilian Personnel Operations Center Management Agency (CPOC-MA) offers many different labor-relations courses several times a year at Aberdeen Proving Grounds, Maryland, including one focusing on labor relations for executives. Army leaders wanting more information about these courses and when CPOCMA is offering them can visit <www.cpocma.army.mil/catalog/ list-alpha.htm>.
32. The Judge Advocate General's School—Army offers the Senior Officer Legal Orientation (SOLO) course four times a year in Charlottesville, Virginia. This 1-week course, offered to Army and Marine Corps battalion and brigade commanders, covers the full spectrum of legal issues encountered by most commanders in the field. Included in the electives for this course are classes on sexual harassment, labor-management relations, and civilian personnel law. Commanders interested in attending the SOLO course should contact their Army Training Requirements and Resources System (ATRRS) representative to reserve a slot.
33. DA Pam 350-58, 3.
34. *USC*, Title 5, Section 7102 (2001).
35. Ibid., 7116(a) (2001).
36. U.S. Penitentiary (USP), Leavenworth, Kansas, and AFGE, 55 FLRA (1999), No. 1276.
37. Internal Revenue Service (IRS), Kansas City, and National Treasury Employees Union (NTEU), 50 FLRA (1995), 661.
38. *USC*, Title 5, Section 7114(b)(4) (2001).
39. DA, 90th Regional Support Command, and AFGE, 1999 FLRA Lexis (1999), 200 (refusing to decide whether access to a government copy machine and giving official time to copy the requested documents would satisfy the statutory duty); Social Security Administration, Dallas Region, and AFGE, 51 FLRA (1996), 1219 (concluding that the agency violated duty to furnish information by destroying requested information and failing to tell the union that it no longer existed); IRS, Kansas City, and NTEU, 50 FLRA (1995), 661 (finding a three-month delay in responding to union request was unreasonable).
40. *USC*, Title 5, Section 7114(a)(2)(A) (2001).
41. Marine Corps Logistics Base, Barstow, California, and AFGE, 45 FLRA (1992), 1332.
42. There is no statutory duty to invite a union employee or representative to a command staff meeting. Commanders choosing to do so might create a practice that will bind successor commanders.
43. Department of the Army, New Cumberland Army Depot, and AFGE, 38 FLRA (1990), 671.
44. *USC*, Title 5, Section 7114(a)(2)(B) (2001).
45. Agency officials should carefully review the relevant CBA to determine if it imposes a more liberal notification requirement.
46. USP, Leavenworth, Kansas, and Department of Justice, Office of the Inspector General, 46 FLRA, (1992), 820.
47. *USC*, Title 5, Section 7114(a)(3) (2001).
48. Ibid., Section 7116(b) (2001) (listing specific union ULPs).
49. Ibid., Section 7116(b)(5)–(6) (2001).
50. Ibid., Section 7116(b)(1) (2001).
51. National Treasury Employees Union v. Federal Labor Relations Authority, 800 Federal Reporter 2d (1986), 1165 (holding that the duty of fair representation applies only to matters related to the CBA).
52. Every CBA must have a grievance procedure negotiated by the parties in which the last step must be binding arbitration (USC, Title 5, Section 7121(a) [2001]).

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